

In your proposed amendment for nomination—

THE CHAIRMAN: That is not under discussion at this point, Delegate Mitchell, 5.01, 5.11.

DELEGATE MITCHELL: I will hold that.

DELEGATE JOHNSON: I have that in the minority report specifically in section 5.11. I feel because there are other amendments pending from 5.01 through 5.10, perhaps we could take care of them now and I would have an opportunity when we reach 5.11 to give the minority report on that subject at that time.

THE CHAIRMAN: I think it would be better if you would give the report now so that the delegates would have in mind the position of the minority in considering any other amendments.

DELEGATE JOHNSON: All right.

THE CHAIRMAN: You may proceed, now.

DELEGATE JOHNSON: Unless there are any other questions on 5.01—

THE CHAIRMAN: We will find that out later. Go ahead with 5.11.

DELEGATE JOHNSON: Mr. Chairman and ladies and gentlemen of the Committee of the Whole:

May I call your attention to section 5.11 and ask that you have placed before you the majority report with respect to 5.11, and the minority report and the proposed amendment with respect to section 5.11.

I think it is important that we read this together to fully understand the impact that the majority will have on our judicial system.

Let me say first that section 5.11 as proposed by the majority states that there will be commissioners of district courts, and certainly there must be and should be but in addition they provide that the qualifications of the commissioners will be prescribed by rule—and this word rule is very important at this point. It is the first time it is used in significant manner in this article. I think that you have to look at the word rule, together with section 5.31 of the majority report, inasmuch as section 5.31 provides that although there will be concurrent rule making power, that is, concurrent rule making power between the court and the legislature in most matters,

those matters that are specifically set forth in Article V or in the constitution to be decided by rule will be exclusive rule making powers.

This is a departure from our present system, a wide departure, I submit; and it is a departure from every other system that we have had an opportunity to study across the nation. Section 5.11 as proposed by the majority provides specifically for the judicial establishment of the office of commissioner.

In other words, the majority proposes that the judiciary who are first appointed, or whose office is set up by the legislature, would then in turn appoint or create the office of commissioner.

Now, in addition to creating the office of commissioner, which we feel is certainly a legislative function, section 5.11 in the majority report also sets forth that the commissioner of the district court will serve at the pleasure of the judge of that district court, that is how long the particular commissioner shall hold office, and when he shall leave office, is left strictly up to the court. In our view this is clearly a legislative function. First of all, we think that the office of commissioner should be filled in a manner prescribed by law and we would hope that the legislature would set up the profession of commissioner so that there would be tenure to the position and a merit system with respect to the office. Mr. Chairman, I do not believe that I have the specific amendment before me, because I had anticipated that we were going to deal with 5.01 this morning—

THE CHAIRMAN: I think you reproduce it on page 4 of your report, do you not?

DELEGATE JOHNSON: Yes. Unfortunately, I do not have that before me. I have some notes. I wonder if the Chair would excuse me long enough to get them.

THE CHAIRMAN: Certainly.

DELEGATE JOHNSON: Mr. Chairman, ladies and gentlemen: Hopefully, without repeating what is contained in the report of the minority, let me add that it is the desire and wish of the minority to see some check on judicial authority with respect to the administration of courts; and even more importantly to remove the courts from what we consider to be a legislative function. We feel that this may be affected in part by having commissioners selected according to the procedures established as provided by law.